IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION.	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:04-CV-85 (DF)**
	§	
SMALL VALUE PAYMENTS	§	
COMPANY,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Defendant Small Value Payments Company's ("Defendant") Motion to Stay Litigation Pending Completion of Reexamination (Doc. No. 36). The Court, having considered the motion, response, and all relevant pleadings, is of the opinion the motion should be **DENIED WITHOUT PREJUDICE**.

Plaintiff DataTreasury Corporation ("Plaintiff") brings this cause of action against Defendant alleging infringement of U.S. Patent No. 5,910,988 ("the '988 patent") and U.S. Patent No. 6,032,137 ("the '137 patent") (collectively, the "patents-in-suit"). Defendant generally deny these allegations and asserts various affirmative defenses, which include non-infringement, invalidity and inequitable conduct. Additionally, Defendant assert counterclaims against Plaintiff for a declaratory judgment of non-infringement and invalidity of the patents-in-suit.

In the present matter before the Court, Defendant moves the Court for a stay of this action in light of patent reexamination proceedings before the United States Patent & Trademark Office ("PTO"). According to Defendant, on November 25, 2005, First Data Corporation (a defendant

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accused of infringing the patents-in-suit in separate proceedings before this Court, *see Data Treasury Corp. v. First Data Corp., et. al.*, C.A. No. 5:03-CV-39) filed *ex parte* requests for reexamination of each of the patents-in-suit pursuant to 35 U.S.C. § 302. On January 6, 2006, the PTO granted these requests. In doing so, the PTO found that substantial new questions of patentability affecting the claims of the patents-in-suit were raised by the *ex parte* requests for reexamination. Thereafter, on May 25, 2006, the Court granted Defendant's agreed motion to consolidate cases and ordered this matter consolidated with *DataTreasury Corp. v. Wells Fargo & Co., et al.*, C.A. No. 2:06-CV-72. *See* Doc. No. 78.

In deciding whether to stay litigation pending reexamination, courts typically consider: "(1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set." *Soverain Sofnvare LLC v. Amazon.Com*,356 F.Supp.2d 660, 662 (E.D. Tex. 2005). Accordingly, the issues raised by Defendant's motion to stay are substantially impacted by the consolidation of this matter with *Wells Fargo*, which the parties' briefing does not take into consideration. Thus, the Court finds that Defendant's motion should be denied without prejudice subject to refiling in the consolidated case.

Therefore, it is hereby ORDERED that Defendant Viewpointe Archive Services, LLC's Motion to Stay Litigation Pending Completion of Reexamination (Doc. No. 36) is **DENIED WITHOUT PREJUDICE**.

SIGNED this 18th day of August, 2006.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE